THE
MADRAS LAW JOURNAL.

I] JANUARY [1941

A CRITICAL NOTE ON LOWRY *V.* CONSOLIDATED AFRICAN SELECTION TRUST, LIMITED, (1940) A.C. 648.

BY

R. S. SRINIVASACHARYA, M.A., B.L.,
Advocate, Madras.

To the earnest student of law, the decisions of the English Courts will always make an irresistible appeal. These decisions form a special class of literature, by themselves, unique in the felicity of language employed and in the luminous discussion of the numerous questions of fact, and, especially, of law that present themselves for decision. And there is nothing so stimulating to the intellect and affording such genuine pleasure as a study of the decisions of the Court of Appeal and of the House of Lords, especially when, as so often happens, divergences of opinions crop up among the members of these tribunals. The different angles from which human ingenuity can look at the same set of facts, the manner in which from first principles, the noble Lords develop their own particular theme, so as to solve the complicated questions that arise for decision, and the brilliant exposition of the "opinion" delivered by each of the Lords all these factors afford an amount of exercise to the intellect that cannot be had elsewhere.

Examples of such decisions are many. To mention a few, the cases of *Mahon* v. *Osborne*[1]—a decision of the Court of Appeal, where the doctrine of *res ipsa loquitur* is examined threadbare—of *Radcliffe* v. *Ribble Motors*[2] and *Wilsons* v. *Clyde Coal and Co.*,[3] (especially, the "opinion" of Lord Wright) where the doctrine of common employment receives a full examination, of *Fender* v. *St. John Mildmay*[4] —where there is a complete examination of the doctrine of public policy—may be mentioned as very recent examples.

1. (1939) 1 All.E.R. 535.
2. (1939) A.C. 215.
3. (1938) A.C. 57.
4. (1938) A.C. 1.

The case under notice must be classed as a leading example of the type of cases mentioned. The facts of this case are quite simple. The question to be decided was whether a Company could claim to deduct—for purposes of income-tax—the potential value of new shares issued as a bonus to its employees, at par, considerably below the market value of these shares then obtaining. No cash was paid by the Company; but, by the issue of these shares at par, the Company lost the chance of obtaining a premium of £11625/- which it could have got by issue in the open market, while undoubtedly, the employees derived a substantial benefit and were, also, charged to income-tax on the advantage which they thus derived. The question that fell to be decided was whether under these circumstances, the Company could claim to deduct the sum of £ 11625/- from the profits of their trade for the year of assessment.

The relevant Rules of the Income Tax Act were also, simple. Rule 1 of cases I and II of Schedule D provided—as expressed by Lord Wright at p. 683 of the Report—that the tax be charged without any deduction other than by the Act allowed. R. 3 (*a*) which is also relevant declared that "no sum shall be deducted in respect of any disbursements or expenses, *not being money wholly and exclusively laid out or expended for the purpose of the trade*......." The assessee claimed that he was entitled to claim this deduction under R. 3 (*a*) quoted above.

Stopping there, it would appear to an unsophisticated mind to be reasonably clear that the assessee's claim should fail. No "money" was, *de facto*, "laid out" or, "expended" within the meaning of the rule cited. At the highest, it could be said that there was only a notional "expenditure" of "money" for the purpose of the trade *i.e.*, to advance the interests of the company by creating in the employees a more direct interest in the trade as a result of their becoming share-holders, as well. There was no rule authorizing in terms a deduction under similar circumstances, as, for example, in the case of the "annual values" of buildings employed in the business of the trade—a matter covered by R. 3 (*c*). These being the facts, as stated the conclusion would appear to a fresh mind, to be clearly against the assessee's claim. No money having been actually "expended," and there being no rule authorising a deduction under such circumstances, the assessee's claim was really hopeless.

But, then, different opinions were expressed during the various stages of the case. Macnaghten, J. in the first instance, ruled against the opinion given by the Commissioners. The Court of Appeal, in an unanimous judgment delivered by the Master of the Rolls reversed

Macnaghten, J., and were, in turn, reversed by the House of Lords, but, only by a majority judgment (Lords Wright and Romer dissenting). The final decision was against the assessee. The most interesting feature of the case was that each one of the noble Lords expressed himself as quite clear in his judgment and felt constrained to deal with the case elaborately, only because a "divergence of opinion" had "emerged."

It is submitted that the majority opinion was the only possible answer to the question that was raised.

Two positions were conceded by the dissenting Lords and by the Court of Appeal :—

(i) Money foregone is not always money expended ; "there is no such general proposition"—per Greene, M.R., at pp. 357 and 362 of (1939) 1 All.E.R. 353; *see also* per Lord Wright at p. 689 of (1940) A.C. 6.8.

(ii) Premium earned by a company on issue of shares can never be taxable profits ; it can never be entered in the Profits account, but, will be assigned to the capital account ; per Lord Wright, at p. 679 and Lord Romer at p. 692, *ibid.*

Nevertheless, this sum of £ 11625/- which was never acquired or given as such, but, was only a notional sum, or, as Lord Wright preferred to put it, "potential" profit was considered to be deductible by the Court of Appeal and Lords Wright and Romer. The matter was, according to their Lordships, clearly governed by authority. According to Greene, M.R. and Lord Wright, the governing authorities were *Usher's* case[1], reaffirmed by *Hoare's* case[2]; and, conversely, the case of *Salmon* v. *Weight*[3]. Lord Romer was of the view that *Usher's* case[1] and *Russell's* case[4] ruled the instant case; the noble Lord did not, however, rely on *Weight's* case[3].

On the contrary, the majority opinions held that none of the cases had any application to the case before the House. The Lord Chancellor observed at p. 656 "with the greatest respect to the Court of Appeal, I am unable to find any principle laid down in *Usher's* case[1] which can be applied to the facts of the present case." Referring to the sentence relied on by the Court of Appeal and extracted from the speech of Lord Sumner, Viscount Maugham observed at p. 664 "with all respect to the memory of a great Judge, I cannot help thinking that the reference to "chattels" must be due to a slip and—I do not think that the sentence in its wide form can be supported." Referring to *Weight's* case,[3] the noble Lord observed "I can see no difficulty in that case ; but, I find some difficulty in appreciating its application to the one before us."

1. (1915) A.C. 433.
2. (1932) A.C. 407.
3. (1935) 153 L.T. 55.
4. (1858) 13 A.C. 418.

(p. 668). And Lord Russell of Killowen said at p. 675 "I am unable to see how the reasoning in either of these two decisions (1915) A.C. and 13 A.C. can be applied to a case like the present." Both Lord Russell and Viscount Maugham were of opinion that *Hilder* v. *Dexter*[1] was directly against the argument for the assessee, while Lord Wright observed at p. 688 that that case "either does not throw any light, or.... more accurately, supports my view."

These cases may, now, be briefly considered. *Usher's* case[2] and the case which it followed, *Russell's* case[3] were both cases where the assessee sought to claim a deduction, in the first case of the difference between the A. schedule assessment and the actual amounts realised from the "tied" tenants, and, in the second case, of the rental value of the premises allowed by the company to be occupied by the manager of the company. Now, the relevant rule, corresponding to the present R. 3 (*c*) specifically referred to the rental of buildings used for "purposes" of trade, and it was, only because of the existence of such enabling rules, that the House, applying the rule enunciated by Lord Herschell in *Gresham's* case,[4] allowed the deduction. But, *for the existence of R. 3 (c), it is clear that the deduction would not have been allowed*, see in this connection the observation of Lord Atkinson at p. 659 (1) 112 L.T. (*Usher's* case), "Deductions which on ordinary practice and business principles—might be deducted—are restricted." The noble Lord was referring to R. 1 of cases I and II of Schedule D. That being so, to say that *Usher's* case laid down any principle of general application, beyond the specific case that was before the House appears, with all respect, to be unjustifiable. On the contrary, except Lord Sumner whose observations from p. 460 of 1915 A.C. are relied upon, no other noble Lord professed to lay down any principles of general applicability. In fact, Lord Parker specifically refers to 13 Appeal Cases 418, and observes at p. 659 (1) of 112 L.T. that *Russell's* case[3] had decided that the annual value was deductible —in a binding fashion—"*although such annual value is not expended in the ordinary sense of the word.*" The whole idea of expenditure of a "notional sum" would, in fact, appear to be foreign to the scheme of the Act and would run counter to the expressed terms of R. 1 of cases I and II of Schedule D.

Hoare's case[5] does not, also, it would seem, advance the assessee's case any further. That case dealt with a different problem, the problem of "aggregation of values, and, in the course of the opinions expressed, the noble Lords sum up the conclusions come to in *Usher's* case. Indeed, as Lord Russell

1. (1902) A.C. 474. 2. (1915) A.C. 433.
3. (1888) 13 A.C. 418. 4. (1894) A.C. 309.
5. (1932) A.C. 407.

of Killowen observed, at p. 674 of (1940) A.C., the language employed by Lord Sumner, if "taken literally" would lead to "some startling results." It is enough to conclude this portion of the subject with the statement that the law does not countenance any notional "expenditure" except in the solitary case of the instances governed by R. 3 (*c*), *e.g.*, *Usher's* case and *Russell's* case. In every other case, there should be a *de facto* expenditure" and a mere negative foregoing of profit cannot attract R. 3 (*a*).

Salmon v. *Weight*[1] presents less difficulty. That case was as the majority Lords pointed out, a case under Schedule E which has nothing in common with Schedule D, which governed the case in question. It was, as Lord Wright pointed out, the converse of the instant case, "the counter-part" as the noble Lord put it at p. 686. It was no doubt held in *Weight's* case that the advantage which the assessee got by an allotment of shares at par, when these shares were selling at a premium in the market, was assessable ; but it must be borne in mind that the language of the rule in question was very wide, and comprehensive—"any perquisites or profits *whatsoever* therefrom"—and, as Lord Atkin who delivered the solitary opinion in that case, observed, there was "no clog on the (allottee) to go on the market and sell the shares." That case, however, can, with all respect, throw no light on the question raised in the instant case. For, the matter had been decided in *Hilder's* case[2] that the allotment of shares at par at a time when the shares are selling in the market at a premium does not involve the company in any "expense." Before passing to that case, it may be incidentally mentioned that *Weight's* case is in conflict with *Blott's* case[3].

Hilder's case, as stated, makes the matter plain. Though the case was decided on the terms of S. 8 of the Companies Act, yet, there is one observation by Lord Davey which was the basis of the decision in that case, and which is highly pertinent to the question arising in the case under notice. At p. 480, Lord Davey observed, "But the point which alone is material for the present purpose is that the benefit of the shareholder from being able to sell his shares at a premium *is not obtained by him at the expense of the Company's capital.*" Those words precisely apply to the present case. The company, by the issue of the 6,000 shares to its employees *did not incur any expense.* Lord Wright asks at p. 682 of (1940) A.C., "If the expense of letting houses ...... is deductible, I cannot see why in principle, the expense of allotting shares .... should not equally be deductible." With respect, the premises are not correct. Lord Wright had been answered long before by Lord Davey.

1. (1935) 153 L.T. 55. 2. (1902) A.C. 474.
3. (1921) 2 A.C. 171.

The conclusions can be summarised in a series of propositions :—

I. No sums can be deducted, for purposes of income-tax, unless they are in fact "expended"; the only exception is that covered by the "annual rental value" cases.

II. No sum can be deducted, unless permitted by the rules; *see* R. 1, cases I and II, Schedule D. The dictum of Lord Romer to the contrary occurring at p. 700 of (1940) A.C. would appear to be misleading; the observation of Lord Atkinson at p. 659 (1) of 112 L.T., would appear to be more in harmony with R. 1.

III. The premium that a company obtains on issue of shares can never be a trading profit, and can never be taxable profit.

IV. The mere fact that the employees derive a certain advantage from the Company does not necessarily lead to the inference that the Company has incurred a deductible expense within the meaning of the Income-tax Act.

V. No expense whatever is incurred by a Company when it issues shares at par, even if, at that time, these shares sell at a premium in the open market.

VI. *Usher's* case cannot be treated as affirming any general proposition that if on ordinary commercial principles a certain outlay or notional expenditure is necessary and is incurred, it must, of necessity, be treated, for purposes of income-tax, as deductible. Lord Sumner's observations, especially, the reference to "chattels" must be treated as *obiter*. It may be useful here, to recall the salutary warning given by Lord Wright in *Radcliffe's* case[1] :—"It (the House) may—refuse to act on expressions of opinion or matters of observation in opinions of members of the House.

VII. The fact that the employee is assessed on shares allotted to him, on the basis of a notional advantage gained by him is irrelevant to the question whether the company should be allowed the deduction claimed.

SUMMARY OF ENGLISH CASES.

SCOTT *v.* FRANK F. SCOTT (LONDON), LTD., (1940) 1 Ch. 794.

Companies—Articles of association not in accordance with intention of signatories—Rectification—If can be made by Court.

The Court has no jurisdiction to rectify articles of association even although it should be proved that the articles of association do not accord with what is proved to have been the concurrent intention of the signatories at the moment of their signature.

(1940) 1 All.E.R. 392, affirmed.

---

1. (1939) 1 All.E.R. 656 : (1939) A.C. 215.

KING FEATURES SYNDICATE, INC. v. O. & M. KLEEMANN, LTD., (1940) 1 Ch. 806.

Copyright—Drawing in two dimensions—If can be infringed by toy figure in three dimensions—Reproduction from copy of plaintiff's work—If infringement of copyright in original work.

Where the artistic work in which copyright is claimed is a drawing in two dimensions (cartoons) it can be infringed by a figure in three dimensions (such as brooches or charms, plaster dolls and mechanical toys). It is immaterial whether the infringing article is derived directly or indirectly from the original work. The standard is objective and the test is whether or not the original work or a substantial part thereof has been reproduced. If it has been, it is no answer to say that it has been copied from a work which was itself, whether licensed or unlicensed, a copy of the original.

(1940) 2 All.E.R. 355, affirmed.

GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION, LTD. v. MIDLAND BANK, LTD., (1940) 2 K.B. 388.

Insurance—Indemnity in favour of three persons in respect of respective rights—Claim by one—Cheque in payment in name of all three indorsed by them to claimant—Subsequent claim for recovery of amount on the ground that claimant was not entitled to indemnity as property insured was wilfully set fire to by assured's servant—Payees of the cheque if liable.

An insurance policy indemnified three persons for their respective rights and interest. After a fire there was a claim by one of them and the insurers paid by cheque in the name of all three assured who indorsed the cheque to the claimant. The insurers, on discovering that the fire was wilfully caused by the claimants' servant (the claimant having become bankrupt) sued the other two payees of the cheque to recover the amount.

Held, the payees who having no claim whatsoever endorsed the cheque to the real claimant were not the recipients of the amount and were not liable for repayment of the money on the ground that it was paid under a mistake of fact.

IMPERIAL SMELTING CORPORATION, LTD. v. JOSEPH CONSTANTINE STEAMSHIP LINE, LTD., (1940) 2 K.B. 430.

Contract—Charterparty—Frustration by accident to ship—Onus of proving whether frustration was or was not self-induced.

The charterers claimed damages against shipowners for failure to load. The shipowners pleaded in defence the destruction of the ship as a navigable unit by reason of the bursting of the boiler and claimed that the contract was thereby frustrated without liability

on their part. The charterers contended that the frustration arose from the default of the shipowners who are not therefore entitled to rely upon it.

Held, a party *prima facie* guilty of a failure to perform his contract cannot escape under the plea of frustration unless he proves that the frustration occurred without his default. There is no frustration in the legal sense unless he proves authoritatively that the cause was not brought into operation by his default.

(1940) 2 All.E.R. 46, reversed.

HILLS *v.* CO-OPERATIVE WHOLESALE SOCIETY, (1940) 2 K.B. 435.

Master and servant—Recovery of damages under Employers Liability Act, 1880, for personal injuries caused by negligence in the course of common employment—Action at common law against employers for servant's negligence—Barred as there was only one cause of action which was satisfied in prior proceedings.

A servant injured by the negligence of his fellow servant having a cause of action against his employers had two courses open to him, namely, (*i*) to raise that cause of action in proceedings under Common Law in which the defence (common employment) would be available to the employers but he could claim unlimited damages; or (*ii*) to raise that cause of action in proceedings under Employers Liability Act, 1880, in which the defence of common employment would be denied to the employers but the damages could not be recovered above a fixed maximum. Once the cause of action under Employers Liability Act, 1880, has been completely satisfied the employee cannot carry on the other set of proceedings under Common Law and endeavour to recover damages in respect of that cause of action which has already been satisfied.

(1940) 2 All.E.R. 441, affirmed.

O'GRADY *v.* M. SAPER, LTD., (1940) 2 K.B. 469.

Master and servant—Servant's rights to wages during absence due to illness.

The headnote of *Morrison* v. *Bell*, (1939) 2 K.B. 187=(1939) 1 All.E.R. 745, that incapacity to perform duties due to illness does not at common law suspend his right to wages under the contract is not and cannot be any statement of any principle of the common law. It is a pure question of fact in every case. If one is to ascertain the implied terms one has to ask oneself: "If somebody had raised the question when they were originally making the bargain what would they both have said about it"? In the present case when the employee was ill on previous occasions he was not paid any wages.

This is conclusive proof that the agreement was that he should not be paid during illness and the employee is therefore not entitled to wages during illness.

HOUGH *v.* LONDON EXPRESS NEWSPAPER, LTD., (1940) 2 K.B. 507.

*Tort—Libel—*Innuendo—*Words defamatory in ordinary meaning but capable of being understood in a secondary and defamatory sense—Proof that some person understood them in the defamatory sense—Whether necessary.*

When circumstances are proved which will clothe with a defamatory meaning words otherwise innocent the question must be (as in the case of words *per se* defamatory) whether reasonable people who know the special circumstances might understand them in a defamatory sense. It is unnecessary though not inadmissible, to call persons to say that they did so understand the words, provided that it is proved that they are people who might so understand them. The plaintiff was the wife of F.H. a boxer and living apart from him and this fact was proved to be known to persons in the neighbourhood. The defendants published in their newspaper, "F.H.'s curly haired wife sees every fight ......" The plaintiffs hair was not curly. Plaintiff alleged an *innuendo* that the words meant that she was a dishonest woman falsely representing herself to be, and passing as the wife of F. H. and that she was an unmarried woman who had cohabited with and had children by F.H.

Held, the words were capable of the *innuendo* and defendants were liable for damages.

JOTTINGS AND CUTTINGS.

THE PORT TRUST MURDER CASE.

(*A sketch by the Hon'ble Mr. Justice Wadsworth, broadcast from the Madras Station of All India Radio.*)

Crier : Silence !

(*Outbreak of coughing on all sides.*)

(*Judge :* Mr. Crown Prosecutor, don't you think it would be a great help to the jury, if you were briefly to summarise the evidence of the witnesses examined last Thursday? After the intervening holidays, the gentlemen of the jury may have forgotten some of the details of the case and will be glad of your assistance in refreshing their memories.

Crown Prosecutor : I respectfully agree with your lordship and will adopt your lordship's suggestion. Gentlemen of the jury, I need not remind you that the accused Ponnusami stands charged with having murdered Kanniah, by taking him to the end of the eastern

arm of the Madras harbour and there pushing him into the sea. You will remember that the corpse of the victim has never been found and that no one actually saw the perpetration of the crime. The prosecution case rests on a chain of circumstantial evidence which, I submit, leads only to the conclusion that Ponnusami, from motives of jealousy, murdered Kanniah by drowning him in the Bay of Bengal. You remember the evidence of Kanniah's aged parents, that their son left home at 5-30 P.M. on the evening of the day before Sivaratri, in company with the accused, both having bicycles, and that he has not been seen or heard of since that night. They informed the police of his disappearance and the investigation led to the discovery of the two witnesses who have proved that Ponnusami and Kanniah rode on their bicycles at about 5-45 P.M. through the Port Trust premises towards the harbour arm. Kanniah was wearing a round imitation fur cap with the trade-mark "S.M." on the lining. They seem to have left their bicycles near the big crane which stands, as you all know, at the south-east corner of the harbour—at any rate, witness Ramudu noticed two bicycles leaning against the crane that evening and next morning the watchman Chengan found only one bicycle, which has been identified as the Rover machine belonging to Kanniah. Then we have the evidence of Ibrahim Sahib, who says that he had been fishing on the harbour arm and was packing up his tackle to go home, just at dark, when he heard a loud cry and a big splash coming from the direction of the northern end of the mole. Next we have the story of the constable that he saw a solitary man, whom he swears to have been the accused, ride his bicycle out through the main southern gateway of the Port Trust about half an hour after dark. The Sub-Inspector has proved that the accused absconded as soon as the investigation started. When he was recognised by witness Sundaram at Chingleput, the accused at first denied having been in Kanniah's company that night, but afterwards admitted that they had been together at the harbour, while declaring that they had separated on the Marina—which we know not to be true. Finally you will remember the two fishermen witnesses, who were fishing from a catamaran just outside the harbour on the morning of Sivaratri day, when they picked out of the water the cap with the trade-mark "S.M.", which has been identified as Kanniah's.

I think that is all I need say at present, my Lord.

Judge: Thank you Mr. Crown Prosecutor. An admirably concise summary, for which the jury will, I am sure, be most grateful.

What witness do we take next?

C. P.: I have only two more witnesses, my lord, whose evidence has a bearing on the motive for the crime. Call Sabapathi Naidu.

Crier: Sabapathi Naidu!

Voice outside : Sabapathi Naidu ! Sabapathi Naidu !

Pause—Whispering and coughing, then shout of "Silence."

Clerk : Sabapathi Naidu. Please repeat after me :

(*Both repeat the oath together.*)

C. P. : Mr. Sabapathi Naidu, I think you are a clerk employed by the Swadeshi Pills and Ointments Co., Madras.

S. N. : Yes, sir—I mean, yes, my lord.

C. P. : Do you know the accused Ponnusami and the missing man Kanniah ?

S. N. : Yes, sir—I mean, yes my lordship.

C. P. : Will you tell the jury what you know of the relations between these two men ? Were they friends or enemies ?

S. N. : They were great friends, your lordship—until there was that trouble about Lakshmi.

C. P. : Who is this Lakshmi and what do you know about her ?

S. N. : Lakshmi is a girl living in Devadasi Street and Ponnusami used to be very friendly with her.

C. P. : You say he *used* to be friendly with her. Are they no longer friends ?

S. N. : No, your honour—I mean, no your lordship. They quarrelled.

C. P. : How do you know they quarrelled ?

S. N. : Ponnusami told me that they quarrelled because of Kanniah.

C. P. : How was that ?

S. N. : Ponnusami said that he went to see Lakshmi one day and he found Kanniah's bicycle outside her house. He got angry and ran inside and Kanniah escaped by the back door. And when he questioned her Lakshmi abused Ponnusami with very bad words.

C. P. : Did he tell you what words she used ?

S. N. : Please, my lordship, they were very bad words. I would be ashamed to tell my lordship such bad language.

Judge : Come, come, Mr. Sabapathi Naidu ! This is not a girls' school. You need not be afraid to tell us what words were used. I am sure they won't be worse than others we have heard in this Court.

S. N. : Sir—I mean my lordship—Ponnusami told me that she called him a .... I am very sorry to speak such bad abuse to my lordship.

C. P. : Please, Mr. Sabapathi Naidu, forget your modesty and tell us what she called him.

S. N. : My lordship, she called him a ...... she called him a d. d. d. ......(*Shouts*)......a damned rascal !

Laughter—Cries of " Silence."

C. P. : She called him a damned rascal, did she ? And after that ?

S. N. : Ponnusami told me that he was much troubled and that he would see about that fellow Kanniah.

C. P. : (*Slowly and emphatically*)—He said he would see about that fellow Kanniah, did he ? When was all this ?

S. N. : That would be about one week before Sivaratri.

C. P. : Thank you, Mr. Sabapathi Naidu.

Defence Counsel : I have only one or two questions to ask you, Mr. Sabapathi Naidu. Were you present when this quarrel took place ?

S. N. : I, sir ? O no sir—I mean my lordship. I would never go to dancing girls' houses.

Def. C. : Of course not. And all you know about this quarrel is what you remember of what Ponnusami told you ?

S. N. : Yes, your honour.

Def. C. : You say that Ponnusami told you this about one week before Sivaratri. Are you sure it was not one month before ?

S. N. : O no, my lordship. I am sure it was one week before.

Def. C. : How can you be sure of the time ?

S. N. : Well, my lord, I remember that he told me this on the very day that the police caught me and sent me to jail.

Def. C. : No further questions, my lord.

C. P. : Why did the police send you to jail, Mr. Sabapathi ?

S. N. : Sir, I was very foolish and joined the anti-Hindi movement and they sent me to jail for one week—and gave me ragi food.

C. P. : Thank you Mr. Sabapathi. That will be all. I call Lakshmi Ammal.

Crier : Lakshmi Ammal !

(*Name shouted once or twice, in distance. Coughing and whispering. Then "Silence".*)

Clerk : Lakshmi Ammal. Please repeat the oath after me. (*Oath.*)

C. P. : Lakshmi Ammal, what are you ?

Lakshmi Ammal : I am a landlady, sir.

C. P. : A landlady! You mean that you take in lodgers?

L. A. : O no, sir. I would never do that. I mean that I live on the income from my land.

C. P. : I understand. You mean to say that you are a landed proprietor. Am I to take it that you have no other occupation or means of livelihood?

L. A. : O yes. I also earn money by singing and playing the vina. I have a very piercing voice and earn big fees by singing to Maharajahs and Ministers and High Court Judges.

(*Laughter*—" *Silence.*")

C. P. : Do you also perform for the amusement of smaller folk, such as this man Ponnusami, for instance?

L. A. : (*Coyly*) It is true that I have sometimes played the vina and sung to Ponnusami, when he came to see me.

C. P. : Did he come to see you often?

L. A. : Not very often. Perhaps once a week, but he hasn't been for a long time now.

C. P. : Do you know why he discontinued his visits?

L. A. : It was because I told him that I didn't want him to come any more.

C. P. : Was he pleased when you told him this?

L. A. : No, sir, he was very angry and he abused me with very bad words.

C. P. What were those words?

L. A. : O sir, I couldn't say such bad words to his lordship. It would not be proper.

Judge : Really, this solicitude for the innocence of the judiciary is being carried too far. Will you explain to the lady that I am not in the least likely to be shocked?

C. P. : Lakshmi Ammal, I must insist on your telling his lordship and the jury what bad language Ponnusami used.

L. A. : He called me a (*whispers*) damned rascal!

C. P. : A what? Speak up. I can't hear you.

L. A. : He called me a (*shouts*) damned rascal.

(*Laughter*—" *Silence.*")

C. P. : What a curious coincidence! And what did you say to him?

L. A. : I told him that if he could not behave like a gentleman in a lady's house, he had better go away.

C. P.: Of course. Can you tell us what was the cause of this, er, altercation?

L. A.: How should I know? Men are very strange and sometimes get angry about very little things.

C. P.: For instance?

L. A.: Well, sometimes they are jealous and imagine that a lady is interested in some other man.

C. P.: Was that the trouble with Ponnusami?

L. A.: I think so.

C. P.: Do you know whom he was jealous of? I don't suggest that he had any reason to be jealous—but whom did he think you were interested in?

L. A.: He was always talking about Kanniah and fancying that I had been having him to my house.

C. P.: Which, of course, was quite untrue?

L. A.: Well.... perhaps not quite untrue, but nearly.

C. P.: What do you mean by nearly untrue?

L. A.: I mean that Kanniah only used to come and see me on Tuesdays; and as Ponnusami used to visit me on Fridays, he couldn't have seen me when he said he had.

C. P.: Quite so. I can understand your indignation at such an untrue allegation. That is all I have to ask you.

Def. C.: Lakshmi Ammal, you didn't call Ponnusami a damned rascal, did you?

L. A.: O no, sir. I would never use such vulgar words. I have read up to the fourth form.

Def. C.: You merely told him firmly and politely that he must behave himself or go away?

L. A.: Yes, sir. You see, I have to think of my reputation.

Def. C.: Quite. And I suppose your other gentlemen friends would not approve of any disorderly scenes in your house?

L. A.: What do you mean by a disorderly house?

Def. C.: I assure you that I meant nothing discreditable to you. I only suggest that your other gentlemen friends would not approve of Ponnusami making a row at your house.

L. A.: Of course they wouldn't.

Def. C.: You have a lot of gentlemen friends?

L. A.: Just two or three.

Def. C.: I suppose Ponnusami knew that you had other gentlemen friends?

L. A.: I don't think so. You see, I have found that my gentlemen friends are apt to quarrel with each other, so I try and keep them apart as much as possible.

Def. C.: And I gather that you don't always succeed. I suggest to you that Ponnusami was jealous of your other gentlemen friends, as well as of Kanniah?

L. A.: I don't think so. You see he .... he hadn't so much cause to be jealous of the others as he had of Kanniah.

Def. C.: Well you ought to know all about that.

C. P.: I close my case.

(Pause—Coughing and whispering. Cry of "Silence.")

Judge: Ponnusami, you have heard the prosecution case. Do you wish to make any statement regarding the evidence?

Accused: Yes, my lord and gentlemen of the jury; I wish to tell the whole truth about this case. I did not murder Kanniah. However black the case may look, I swear that I did him no harm. It is true that out of fear I ran away and hid and tried to escape arrest by telling lies. That was a very foolish thing to do and I regret it bitterly. I now realise that my only chance of convincing the jury of my innocence is to tell the whole truth, concealing nothing and admitting even those facts which seem to speak against me. I beg you, my lord and gentlemen of the jury, to give a sympathetic hearing to my story.

It is true that I quarrelled with Lakshmi Ammal and that I was jealous; but I was no more jealous of Kanniah than of half a dozen other men who used to visit her. I never quarrelled with Kanniah or wanted to do him harm. We were old friends and on the night before Sivaratri, we went on our bicycles to the harbour arm for a breath of fresh air, as we often did. We walked to the end of the mole and sat down near the lighthouse, watching the waves, till dusk. Then I suddenly remembered that I had promised to meet a friend at 7 o'clock.

Judge: Can you tell the jury who that friend was?

Accused: Yes, my lord. It was Jagannatha Mudaliar. But unfortunately I could not get him to speak on my behalf, as he left for Singapore next day and I don't know his address. Kanniah wanted to stay by the sea a little longer, so I said good night to him there and hurried back and rode off on my bicycle to meet Jagannathan. Two days later I heard a rumour that Kanniah had been murdered by being drowned in the sea and I was afraid that I might be implicated. So I ran away to Chingleput and hid there. When I was recognised and questioned, I was terrified and invented the foolish story that Kanniah and I had left the harbour together and parted

on the Marina. That was a silly lie and I am sorry for it. But it isn't right that I should be hanged for telling a lie. My lord, I swear that I did not kill Kanniah. I don't know even now whether he is alive or dead or what happened to him. This is the truth as................

(*He bursts into sobs. Whispering and talking*—" *Silence.*")

Judge : I can assure you, Ponnusami, that the gentlemen of the jury will give their most anxious consideration to your statement. Mr. Subramaniam, will you please open for the defence.

Def. C. : My lord, gentlemen of the jury : My client's frank and moving story, to which you have just been listening, relieves me of a large portion of my task. What he has told you, gentlemen, is a simple, unvarnished story of what actually happened. Not only is it true. I will demonstrate to you in a few minutes that I can prove its truth by positive evidence. My client did not kill Kanniah. It is all very well to prove that Ponnusami was jealous and that he was in company with Kanniah on the night when Kanniah lost his cap in the sea. Does that prove that Kanniah was drowned, or that Ponnusami pushed him in? I wonder how many hats are blown into the Madras harbour every year—probably dozens. But we don't charge the friends of all those who lost their hats with murder. How often does a big fish make a splash at dusk without some muddleheaded angler jumping to the conclusion that someone has fallen into the sea? You know Dr. Johnson's definition of angling—"a piece of string, with a worm at one end and a fool at the other." Again, how many bicycles are left leaning against a wall owing to the negligence or forgetfulness of the owner, or even with the deliberate intention of misleading. I ask you, gentlemen of the jury, as men of common sense and experience, are you prepared to send my client to the gallows on evidence such as this?

I say that the prosecution is bound to fail, however great the suspicion of foul play, unless it is proved beyond all reasonable doubt that Kanniah was murdered that night. The prosecution must prove not only that Kanniah lost his hat, but that he lost his life and that the accused caused his death. What is the point of all this suspicion and mystery, if Kanniah is still living? The prosecution says that he has disappeared. But how many men have disappeared without being dead? There are dozens of reasons which cause men to go into hiding—fear, love, debt, quarrels, a guilty conscience, a nagging wife, or a desire to give up the world and save one's own soul. Any one of these motives may have caused Kanniah to disappear. You cannot on the evidence infer that he is dead. But, gentlemen of the jury, even if you were inclined to do so, I am going to put it out of your power to make that terrible mistake. I will prove to you that Kanniah is alive.

Crier, call Kanniah.

(*Shouts of "Kanniah." Buzz of conversation. Cries of " Silence."*)

Clerk : Kanniah, please repeat the oath after me. (*Oath.*)

Def. C. : Kanniah, when were you last in company with the accused Ponnusami?

Kanniah : On the night before Sivaratri.

Def. C. : Where did you go?

K. : We cycled to the harbour and walked to the end of the mole.

Def. C. : Did the accused push you into the sea?

K. : No, sir.

Def. C. : Am I wrong in assuming that you were not drowned that night?

(*Laughter—Cries of " Silence."*)

K. : I was not drowned, nor was I in danger of drowning.

Def. C. : Tell us what happened.

K. : Ponnusami and I sat talking at the end of the mole till it was nearly dusk. Then he suddenly remembered that he had an appointment and hurried off. I sat there thinking about my troubles and trying to pluck up courage to drown myself and put an end to my worries. You see, I was heavily indebted to the Mint Street sowcar, and though I had paid back twice as much as I had borrowed, he had got a decree against me for Rs. 500 and was trying to get me arrested and I didn't know what to do. I looked at the sea and tried to make up my mind to jump: but the waves looked so cold and dark and angry, that I could not do it. All of a sudden, I had an inspiration—I would pretend that I had committed suicide and disappear. It was quite easily done. I threw my cap into the water and left a pencilled message by the lighthouse. Unfortunately the wind must have blown the message away as it doesn't appear to have been found. Then I walked back leaving my bicycle where it stood, and took train for Ceylon, where I found work on a tea estate. A week ago a friend told me that the Madras Government had passed a new law that nobody need pay their debts to the sowcars. So I came back and fortunately arrived just in time to save my friend Ponnusami from the charge of murdering me.

Def. C. : Thank you, Kanniah. My Lord, I submit that on this evidence my client is entitled to an acquittal.

Judge : This is really a very unusual case and it certainly seems rather futile to go on with it when the victim has testified that he has never been murdered. Have you anything to say, Mr. Crown Prosecutor, before I direct the jury to return a verdict of not guilty.

C

C. P. : My lord, I crave your lordship's indulgence, but I have just received certain instructions which make it imperative that I should cross-examine this witness.

Judge : Well! well! We live in an age of miracles. First the murdered man testifies that he is still alive and now you want to cross-examine him—presumably to show that he is really dead. It seems rather futile, but I have no power to refuse your request. Proceed, but please be brief.

C. P. : Your lordship's wishes shall be respected. (*Coughs*) Kanniah—are you sure that your name is Kanniah?

K. : Of course I am.

C. P. : My instructions are that your real name is Purushottam and that you have shaved your moustache and cropped your hair, so that you may bear some resemblance to Kanniah.

K. : I can't help your instructions. I am Kanniah, not Purushottam.

C. P. : Didn't you go to a barber in China Bazaar Road yesterday evening and have your moustache shaved?

K. : Well, what if I did?

C. P. : Why did you do that? Was it because you knew that Kanniah was clean-shaven?

K. No. I had a shave because I needed one.

C. P. : What was the trade-mark on the cap you threw into the harbour?

K. : I .... I can't remember ...... I ......I think it was a ...... an elephant.

C. P. : Are you sure it hadn't the letters "P.K."

K. : Er......yes. It had an elephant and some letters like "P.K."

C. P. : And that bicycle which you left at the harbour—what make was it?

K. : It was ...... I think it was a Zenith, but I can't remember.

C. P. : You are sure it wasn't a National?

K. : I can't quite remember. It might have been a National.

C. P. : Had it got an oil lamp or an electric lamp?

K. : I can't remember. Sometimes I used an oil lamp and sometimes a battery light.

C. P. : What was the name of the manager of the estate in Ceylon where you worked?

K. : I ...... I don't know his name. We always called him the *dorai*.

C. P. : Now I want to ask you about Alamelammal, Kanniah's mother. What is the name of her elder brother ?

K. : I......I don't remember.

C. P. : Who is her younger sister ?

K. : I don't know all these things. I never paid any attention to my mother's relatives.

C. P. : Well ! well ! If you don't know about her relatives, we'll try something else. How many rooms are there in her house ?

K. : Er ...... four ...... or five.

C. P. : Or six ?

K. : There might be six.

C. P. : Where is the tap ?

K. : I ...... I ...... I can't remember.

C. P. : What is the door number ?

K. : I ...... I am getting confused with all these questions.

C. P. : Of course you are. And the reason for your confusion is that you are lying, when you say that you are Kanniah, son of Alamelu, isn't it ?

K. : I ...... I don't remember.

(*Laughter.—Cries of " Silence."*)

C. P. : My lord, I don't think I need ask this witness any further question. But I submit that in the interests of the administration of justice, his evidence requires further investigation.

Judge : I quite agree. Apparently a most impudent impersonator. The witness will be detained in the custody of a bailiff of this court, pending consideration of the question of prosecuting him for perjury.

(*Buzz of conversation. Cries of " Silence."*)

Def. C. : My lord, gentlemen of the jury : As your lordship has observed, this is a very extraordinary case. First we have a charge of murder without a corpse. Now I do not say that there must always be a corpse when there is a trial for murder, but my learned friend will concede that the production of the corpse for *post mortem* examination is the usual way of proving that the victim has been killed. In this case, all that we have to take the place of the corpse is a wet cap, an abandoned bicycle and the disappearance of their owner. These circumstances are suspicious, but they do not amount to proof of death, much less to proof of murder. Assume for a moment that Kanniah was drowned, how do we know that he did not commit suicide ? I suggest that there is no proof whatever that a murder has been committed. Now I must say just a few words about this last witness. I assure you, gentlemen of the jury,

that when I put him into the box I had every reason to think that he was the missing man, Kanniah. After my friend's cross-examination, I must confess to some doubt on this point. But even if we assume that there has been an attempt at personation, does that prove that Kanniah is dead? Gentlemen, when the chief examination of this witness was concluded, were you not all convinced—as I myself was convinced and as his lordship was apparently convinced—that the missing man stood before you. Well, what does that show? The very readiness with which we all accepted this story shows that the chain of circumstances on which the prosecution relies, was not complete. There is nothing impossible in Kanniah being alive to-day: and I solemnly warn you, gentlemen, of the danger that, in your indignation at an apparent attempt to deceive you, you may commit the terrible mistake of convicting my client of a murder which quite possibly has never been committed. Only consider the evidence, calmly and dispassionately, and you are bound to find my client not guilty.

C. P.: My lord, gentlemen of the jury, I have little to add to my opening remarks. But I must say a few words about this last witness, whose impudent attempt at impersonating a dead man has been so fortunately defeated. I entirely accept my learned friend's assurance that he was innocent of this astounding plot. But the very fact that the friends of the accused have thought it necessary to play such a trick, not only upon the Court and the jury, but also upon their own counsel, shows the depth of their conviction that only by trickery could the accused hope to escape the consequences of his own misdeeds. It is your duty, gentlemen, to show by your verdict your disapproval of such nefarious schemes. I submit that the evidence proves that Kanniah went on to the mole that evening in company with the accused, who had a motive to wish him ill; and that Kanniah was drowned in the sea that night in circumstances that justify the conclusion that this accused Ponnusami pushed him in. If you believe the evidence which I have adduced, the truth of which has not been seriously challenged, by the defence, you will, I submit, be justified in bringing in a verdict of guilty. If you are doubtful of his guilt, he is entitled to the benefit of the doubt, always provided that your doubt is a reasonable doubt and not a mere reluctance to accept the logical consequences of the evidence.

Judge: Gentlemen of the jury, there are two questions which you have to ask yourselves. Firstly, is Kanniah dead? Secondly, was he murdered by the accused? On the first point there are the facts that he went on to the harbour arm on the evening of the supposed crime, that his companion came away without him, that his cap was found floating in the water and his bicycle abandoned on the quay, that a shout and a splash were heard from the end of the

mole at nightfall and that Kanniah has completely disappeared since that night. Are these facts sufficient to establish death? You must remember that no corpse has been recovered, that the evidence regarding the shout and the splash is that of a single witness who may have been mistaken about what he heard or when he heard it. The finding of the cap and the bicycle would doubtless be enough to raise suspicion and justify enquiry, but does this evidence go any further?

Assuming that Kanniah is dead, has it been proved that the accused murdered him? Except for his own suspicious acts, there is very little to fasten the crime of murder upon the accused. The evidence of motive is not particularly strong and you must remember that while motive frequently indicates who might have committed a crime, it is hardly ever sufficient to prove that the suspected person actually did it. The conduct of the accused in absconding and, when recognised, in giving a false account of his movements is also highly suspicious. But remember that such conduct is consistent not only with guilt, but also with fear. Finally, can you rule out the possibility of suicide? I doubt very much whether you can.

Just one word about the witness who personated the missing man. His conduct will be considered in other proceedings. You are not concerned with it when once you have rejected his evidence, as I think you will. Neither the accused nor, I am sure, his counsel is responsible for this witness's prevarications. But when you remember how almost all of us were at first convinced that he was the missing man Kanniah, is it possible for us now to be equally certain that Kanniah is dead and that he was murdered by this man Ponnusami? Gentlemen, please consider your verdict.

(*A short pause, filled with whispering and coughing and shuffling of chairs. Then shouts of "Silence."*)

Clerk : Have you considered your verdict?

Foreman : Yes, my lord.

Clerk : Is it unanimous?

Foreman : Yes, my lord.

Clerk : Do you find the accused guilty or not guilty?

Foreman : Not guilty, my lord.

(*A sudden buzz of conversation. Shout of "Silence."*)

Judge : Ponnusami, you have been found not guilty by the jury and I acquit you of the charge of murder and direct that you be set at liberty.

Crier : Oyez, oyez, oyez; all persons having had business with my Lord the King's Justice in this Sessions of Oyer and Terminer, General Gaol Delivery and Admiralty in the City of Madras will

now depart, the Sessions having terminated. God save the King, Emperor of India and my Lord the King's Justice.

The Way in U. S. A.—As one might expect, America has produced the most hopeful plea lately put forward from the dock. A man charged at Glendale with burglary said : "I 'm doing it to pay my way through the Los Angeles City College." Less ambitious but likewise optimistic was the tramp at Nebraska who told Judge Palmer that his name was " Suspended Sentence Stevens." But the judge replied : " Well, they call me ' Ten-day Palmer.' " Too much self-confidence does not always pay in the courts of the United States. I like the story of the man who, on being fined 200 dollars, smiled and said : " That's O.K., judge, I got that in my pants pocket," to which the judge replied: " Then I will add one year's imprisonment. Got that in your pants pocket ?" Then there was the Chicago judge who warned a young woman : " Be careful. You'll talk yourself into jail." She answered : " If I do that I can talk myself right out again." He immediately sentenced her, adding : " You can start preparing that speech right now."—*S.J., 1940, p. 487.*

Migration in the Profession.—In this country we have long been accustomed to the two branches of the profession of the law, the one consisting of members of the Bar, and the other that of the solicitors, the latter sometimes popularly, but by no means accurately, described as " the lower branch," though it was indeed done by Mr. E.B.V. Christian in his delightful book " Leaves of the Lower Branch," * * * * * * Quite separate as the two branches are, migration has frequently taken place between the two, for the most part from the solicitor branch to the Bar, but occasionally the migration has been the other way. Of immediate interest is it to note the large number of those who were destined to rise to high places in the law who started off in their legal career in what were called the offices of the attorneys, a term which has almost become obsolete save, curiously enough as part of the title of the head of the Bar. To mention a few of those who later achieved distinction at the Bar after having spent some probationary time in the offices of solicitors may prove of interest. Those who recall the career of Cowper the poet may remember that as a young man he was very frequently at the house of his uncle Ashley Cowper, Clerk of the Parliaments, who, it seems, was a very little man accustomed to wear a white hat lined with yellow, a circumstance which led his nephew to remark facetiously that it would not be very surprising if, some day, he should be " picked " by mistake for a mushroom and popped into a basket. More germane, however, to our present purpose is the

fact that Cowper was for a time a clerk in the office of a Mr. Chapman, a solicitor, where he had as a fellow clerk one Edward Thurlow, whose great powers Cowper even at this early date could appreciate, leading him one day to say, "Thurlow, I am nobody, and shall always be nobody, and you will be Lord Chancellor. You shall provide for me when you are." Thurlow smiled and said, "I surely will." "These ladies," said Cowper, "are witnesses." Let them be," replied Thurlow, "for I certainly will." One who traced Cowper's career in a charming memoir thus commented "Cowper's prophecy was fulfilled, but not Thurlow's promise." It may be added, however, that time, which weighs characters in unbiased scales, has given the recluse poet a higher status than was achieved even by the vigorous holder of the seals.—*L.T.*, *1940*, *p. 105*.

Lord Hardwicke.—Like most of those who rose to prominence in the law about the same time, Philip Yorke, whom we recall as the great Lord Hardwicke, spent his early years in the office of a Mr. Salkeld in Brooke Street, Holborn, being taken as an articled clerk without a fee. We are told that he gained the entire goodwill of his master who, in fact, early observed his abilities, but it appears that Mrs. Salkeld was not greatly appreciated by the future Lord Chancellor especially when she sent him to fetch in little necessaries from Covent Garden. In his accounts with his master we are told that entries frequently occurred such as these: "coach hire for roots of celery and turnips from Covent Garden, and a barrel of oysters from the fishmonger's." On observing this entry Mr. Salkeld deprecated "the impropriety and ill-housewifery of such a practice," and so put an end to it. About the same time that Yorke was being initiated into the mysteries of legal nomenclature and legal practice in the office of Mr. Salkeld the same gentleman was fortunate in having quite a number of young men bent on the same errand, these including Parker, afterwards Chief Baron of the Exchequer, Jocelyn later Lord Chancellor of Ireland, and John Strange, who in due time became Master of the Rolls—a galaxy of legal talent of which Mr. Salkeld no doubt was very proud.—*L.T.*, *1940*, *p. 105*.

Other Instances.—Among others who may be said to have graduated in law in the offices of attorneys, as they were then called, was Lloyd Kenyon who in due course became Attorney-General and Master of the Rolls. He was articled to a Mr. Tomkinson, an attorney at Nantwich, where we are told he with extraordinary diligence mastered the elements of the profession. He had apparently looked forward to a partnership with his master, but certain differences arose as to the terms and he forsook the ranks of intending solicitors

and changed over to the Bar to which he was called at the Middle Temple in 1756. The small allowance which his father was able to give him obliged him to a severe parsimony, a characteristic which he retained to the end of his days, and we are told that he was proud in his later years to point out the eating-house near Chancery Lane in which he, Dunning and Horne Tooke were accustomed to dine together at the modest cost of 7¾*d.* a head. In 1784 he was appointed Master of the Rolls, a post which then and till a comparatively late date did not preclude the holder from sitting in the House of Commons, and so we find that Kenyon was elected for Tregony "and fully ingratiated himself with the Minister by his zealous opposition to Mr. Fox as a candidate for Westminster, actually having a bed put up in the loft of his stables to give him a vote." After presiding at the Rolls for a few years he was, on the resignation of Lord Mansfield, appointed as head of the King's Bench. Lord Gifford who became Master of the Rolls had been articled to a solicitor in Exeter where he is said to have made himself so practically useful that during the illness of his employer he was entrusted with the management of the business. Changing over to the Bar, after a nine years' interval, he was appointed Solicitor-General; and a few years later he became Attorney-General in which capacity it fell to him to prosecute the conspirators implicated in the Cato Street plot for upsetting the Government. It fell to him also to open the charges against Queen Caroline in support of the preamble of the Bill of Pains and Penalties. Eventually, it will be recalled, he was appointed Chief Justice of the Court of Common Pleas. After his elevation to the peerage he took a leading share of the appellate work of the House of Lords, his work in the sphere giving great satisfaction to the legal profession in Scotland, an esteem which was markedly shown on a visit he paid to the north shortly afterwards. A curious reference to him will be found in Sir Walter Scott's Journal under date 9th June, 1826, which reads as follows: "One effect of running causes fast through the Courts below is, that they go by scores to appeal, and Lord Gifford has hitherto decided them with such judgment, and so much rapidity, as to give great satisfaction. The consequence will in time be, that the Scottish Supreme Court will be in effect situated in London. The downfall—as national objects of respect and veneration, the Scottish Bench the Scottish Bar, the Scottish law herself, and—and—there's an end of an auld sang. Were I as I have been I would fight knee deep in blood ere it came to that."—*L.T.*, *1940*, *p. 106*.

Unexplained Detention.—In 1690 one John Bernardi was arrested for political reasons which seemed good to the authorities and lodged in Newgate "loaded with heavy irons and put into a dark and stinking apartment." When he was brought to court to be bailed out the

Treasury Solicitor opposed his release and "whispered the judges on the Bench." On the pretext that further evidence against him must be collected a special Act of Parliament was passed to keep him in detention for another year. No charge was ever made against him, but successive Acts of Parliament were resorted to in order to keep him a prisoner. At the age of sixty-eight he married a devoted wife who bore him ten children within the walls of Newgate. He died still untried in 1736 after nearly fifty years in prison. And the moral of that is that when freedom from arbitrary arrest is at stake the courts and the people cannot be overjealous of resort to statute to exclude the traditional right of resort to the Judges of England. We see to-day a multiplication of cases in which persons, some obscure, some well-known, are indefinitely detained in prison, uncharged and untried. No doubt where admitted Fascists or Communists or enemy aliens are concerned the maxim *res ipsa loquitur* properly applies, but now that we have accustomed ourselves to the rhythm of war it seems only prudent in the case of the others to lay down some procedure (which could easily be devised) where by the actual grounds of suspicion or worse could be submitted by proper evidence to the trained, impartial and discreet consideration of the judges in court, if possible, or in chambers, if public safety demanded it.—*S.J., 1940, p. 512.*

Facts wanted.—The infallibility of police officials and Government departments and the unimpeachable reliability of anonymous informers was never a principle of the common law. No case added more lustre to the reputation of Lord Carson than his fight through official obstructionism to secure the vindication of young Archer Shee arbitrarily dismissed from Osborne for a theft he had not committed. To Ridley, J., he said : "The Crown can, I suppose, be high-handed out of court, but in open court it is not to be tolerated." Afterwards, recalling the scene in the Court of Appeal, he said : "I shall never forget how old Vaughan Williams who was a great lover of justice responded to my argument. 'Yes, yes, he said, 'Where are the facts ? We want the facts.'—*S.J., 1940, p. 512.*

Campbell's Appreciation.—As all readers of Campbell's Lives of the Chancellors and the Chief Justices are well aware, the author is, in many instances, a severe critic, but it is noticeable that when speaking of Abbott, or Lord Tenterden as he became, his language is that of eulogy. He wrote, "I practised under him until his death, having daily fresh reason to admire his profound knowledge of his profession, his extraordinary soundness of intellect, and his invariable

and earnest love of justice." While he did not scintillate on the bench he was not without a fair share of humour, for we are told that the last day he ever sat in court, wishing to rebuke a counsel who was wasting time by very irrelevant questions respecting a journey performed by the Mayor of Bristol in a postchaise and four, the Chief observed with much solemnity, "Sir, you have forgotten to ask him the colour of the jackets of the postillions." The same night he was taken dangerously ill, and having in his delirium still dreamt of the trial in which he had been engaged, he expired with these words upon his lips: "Gentlemen of the jury, you will now consider your verdict." So passed away he who experienced in his youth the failure that was to prove the first step towards the success which he worthily reaped by his diligence and attention to work. It may be added that, following the practice of his predecessors in the office of Chief Justice, he never entered the House of Lords without wearing his judicial robes, and it was said that he was the last holder of the office to conform to the ancient rule.—*L.T., 1940, p. 120.*

Lord Braxfield.—Of this redoubtable judge, to whom, it is interesting to recall, young Walter Scott dedicated the thesis he prepared for admission to the Bar, Cockburn gives us a powerful sketch, describing him as "the giant of the bench," one whose very name made people start. His language was strong and abusive, this being so even in his own household as, for example, when his butler came to him to tender his resignation and on being asked why he was taking this step, replied that his Lordship's wife was always scolding him, an explanation which the judge met with the curt comment, "Ye've little to complain o'; ye may be thankful ye're no married to her!" They were very plain spoken in those days; indeed brutal. Thus, we read that Braxfield once said to an eloquent culprit whom he was about to sentence, "Ye're a very clever chield, but ye wad be nane the waur o' a hanging." "Hang," however, was, it seems, Braxfield's phrase for all kinds of punishment, as was the case when he said to Mr. Horner, the father of the once famous Francis, on entering the jury box at a sedition trial, "Come awa, Maister Horner, come awa and help us to hang ane o' thae damned scoondrels." In the like brutal fashion his colleague, Lord Kames, when he tried Mathew Hay, a man with whom he used to play chess, for murder, remarked when the jury returned their verdict of guilty, "That's checkmate for you, Matthew!".— *L.T., 1940, p. 131.*

Lord Cockburn's Story.—In his circuit journeys, Lord Cockburn has an amusing account of a medical man giving evidence in his very learned fashion and pooh-poohing various symptoms that spoke eloquently of the real facts. A woman was being tried for the murder of her child whose throat was found crammed with pieces of coal, while there were also marks of a thumb and two fingers on the neck. These cogent pieces of evidence had little or no influence on the medical expert who was called for the defence, who, whenever any of the murderous pieces of evidence were put to him, put them aside as of no account. He added that though such things might startle the ignorant they were of no consequence to a person of large practice and that he himself had seen hundreds of children born with very similar marks. "Ay, but Doctor, " interposed one of the jury of a severely practical turn, " did you ever see ony o' them born wi' coals i' their mooth ?"—*L.T., 1940, p. 168.*

Where the Doctor Scored.—So many stories have been retailed at the expense of the faculty that it is only fair that there should be recalled one in which the medical witness had the better of his cross-examiner. The witness was that very distinguished man, Dr. Gregory, who was called to give his opinion as to the mental capacity of the person in question. In the witness's opinion the particular person was insane. In cross-examination the Doctor admitted that the person played admirably at whist. Thereupon cross-examining counsel put to the witness the following question : " And do you say, Doctor, that a person having a superior capacity for a game so difficult, and which requires in a pre-eminent degree memory, judgment and combination can be at the same time deranged in his understanding ?" " I am no card player," replied the witness, " but I have read in history that cards were invented for the amusement of an insane King." This answer was conclusive. It may be added that according to a legend, whether well, or ill-founded is immaterial, cards are said to have been devised for the amusement of the mad King Charles VII of France.—*L.T., 1940, p. 168.*

BOOK REVIEWS.

THE NEGOTIABLE INSTRUMENTS ACT : By James Menezes, B.SC., LL. M., Advocate, Bombay. Published by Vora & Co., Publishers Ltd., Bombay, 1940. Price Rs. 3 nett.

The book is one designed specially for law students. As lecturer in Mercantile Law at the Sydenham College of Commerce and Economics, Bombay, the author has first hand knowledge of the

difficulties experienced by students of this branch of law. The author has therefore endeavoured to expressly lucidly and in simple language within a small compass the principles of the law relating to Negotiable Instruments in India. The citation of authorities has been selective both with reference to English as well as Indian decisions though we should have liked that cases like *Karam Chand* v. *Mian Mir Ahmad Aziz Ahmad*, A.I.R. 1938 P.C. 121 (as to the requirements of a promissory note) and *Ghanshyam Das Marwari* v. *Ragho Sahu*, I.L.R. 16 Pat. 84 (F.B.) (on the scope of S. 48) had also been included. The notes to the sections are clear and the illustrations useful. The book is bound to be of much help to lawyers and law students.

THE CODE OF CRIMINAL PROCEDURE: By V. V. Chitaley and K. N. Annaji Rao, published by the All India Reporter Ltd., Nagpur, 1940. Second edition. Vol. 1.

The authors are very familiar to the legal public in connection with their valuable commentaries on the Code of Civil Procedure and on the Indian Limitation Act. The book under review deals with the first 200 sections of the Criminal Procedure Code. The vast mass of decisions under each section has been analysed and classified under appropriate and relevant headings, the principles thereof have been elucidated and wherever conflicts of judicial opinion are to be found they have come in for adequate notice. The authors have borne in mind the principle that a legal publication, if it is to be really useful to the legal profession must be always kept up to date. One feature which would in some measure detract from the utility and popularity of the work is the mode in which references to decisions have been given. The references to Official Reports have no doubt been given where the authorities are to be found in the Official Reports but in other cases the references are almost from the A.I.R. and the Criminal Law Journal only. The book under review is essentially a case book and not a juristic treatise and as such there can be no real justification for the restriction practised in the matter of providing parallel references. The book is otherwise thorough and we have great pleasure in welcoming the publication.